

The Honorable Samuel J. Steiner
Chapter 7
Hearing Date: May 15, 2009
Hearing Time: 9:30 a.m.
Hearing Location: Seattle, WA
Response Due: **May 8, 2009**

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

IN RE:

Rupanjali Snowden,

Debtor(s).

Case No. 09-10318-SJS

MOTION FOR SANCTIONS
AGAINST CHECK INTO CASH FOR
WILLFUL VIOLATION OF THE
AUTOMATIC STAY UNDER 11
U.S.C. § 362(k)(1)

Comes now Debtor Rupanjali Snowden ("Debtor"), by and through her attorney Christina Latta Henry, Seattle Debt Law LLC, pursuant to § 362(k)(1) and Federal Rule of Bankruptcy Procedure 9014, and moves this Court for an order declaring that Check Into Cash willfully violated the automatic stay when, post-petition and after receiving notice of Debtor's bankruptcy, it attempted to collect on Debtor's pre-petition payday loan.

This Motion is based on the Declarations of Rupanjali Snowden and Christina Latta Henry, Exhibits, and Authorities filed concurrently herewith.

I. FACTS

1.1. Debtor filed a voluntary petition under Title 11 Chapter 7 of the U.S. Bankruptcy Code on January 16, 2009.

MOTION FOR SANCTIONS AGAINST CHECK INTO
CASH FOR WILLFUL VIOLATION OF THE
AUTOMATIC STAY UNDER 11 U.S.C. § 362(K)(1)
(09-10318-SJS) - 1

SEATTLE DEBT LAW, LLC
705 SECOND AVE., SUITE 501
SEATTLE, WASHINGTON 98104
telephone (206) 324-6677
fax (877) 562-5148

1 1.2 Debtor listed Check Into Cash as a creditor on Schedule F of her bankruptcy
2 petition.

3 1.3 The amount of Check Into Cash's claim was listed as \$575 on Schedule F.

4 1.4 This debt was incurred in 2008 as a "payday loan." Debtor gave Check Into Cash
5 a post-dated check in exchange for funds received. Declaration of Rupanjali Snowden, ¶ 1.

6 1.5 In November 2008, Debtor placed a stop payment order with her bank on the
7 post-dated check. Declaration of Rupanjali Snowden, ¶ 2.

8 1.6 On January 22, 2009, a Notice of Chapter 7 Bankruptcy Case was mailed to
9 Check Into Cash by the United States Bankruptcy Court, Western District of Washington, on
10 Debtor's behalf. Declaration of Christina Latta Henry, ¶ 4.

11 1.7 On Friday, February 20, 2009, Check Into Cash presented Debtor's pre-petition,
12 post-dated check to Debtor's bank. Declaration of Rupanjali Snowden, ¶ 4.

13 1.8 Debtor's bank account was overdrawn by this presentment, resulting in numerous
14 overdraft charges to Debtor's account. Declaration of Rupanjali Snowden, ¶ 4.

15 1.9 On Saturday, February 21, 2009, Debtor, on advice from her attorney, went to the
16 local branch of Check Into Cash and spoke with an employee there. She was told that they had
17 received notice of her bankruptcy filing, that her bankruptcy documents had been forwarded to
18 their main office, and that the manager was aware of the situation. Declaration of Rupanjali
19 Snowden, ¶ 6.

20 1.10 Debtor's attorney also communicated with Check Into Cash on several occasions,
21 via fax and telephone, both before and after Debtor filed her bankruptcy petition. Representatives
22 of Check Into Cash stated that they had received notice of Debtor's bankruptcy and that they had
23 forwarded the notice to their corporate headquarters. Declaration of Christina Latta Henry, ¶ 4.
24
25
26
27

1 1.11 Debtor also spoke with employees of U.S. Bank about the situation because she
2 had put a stop payment on the check in question several months earlier. However, U.S. Bank
3 refused to do anything to help her. Declaration of Rupanjali Snowden, ¶ 8.

4 1.12 The funds have not been returned to Debtor. Debtor had to borrow money to pay
5 all of the overdraft fees on her bank account in order to bring the account current. Declaration of
6 Rupanjali Snowden, ¶ 7.

7 1.13 Since finding out about the check being cashed and the resulting overdraft fees,
8 Debtor has been very upset. Her mental and physical distress is described in detail in her
9 Declaration, filed concurrently herewith, at ¶ 9.
10

11 II. LEGAL AUTHORITY

12
13 Once a debtor files bankruptcy, no creditor can take any action to exercise control over
14 property of the estate. 11 U.S.C. § 362(a)(3); *In re Colortran, Inc.*, 210 B.R. 823 (9th Cir. B.A.P.
15 1997). The obligation to turn over property is a mandatory duty arising upon the filing of the
16 bankruptcy petition. *In re Abrams*, 127 B.R. 239, 242-43 (9th Cir. B.A.P. 1991). The creditor
17 must tender the goods or face sanctions for violation of the stay. *Abrams*, 127 B.R. 239;
18 *Colortran*, 210 B.R. 823. An individual injured by any willful violation of a stay “shall recover
19 actual damages, including costs and attorneys’ fees, and in appropriate circumstances may
20 recover punitive damages.” 11 U.S.C. § 362(k)(1). A “willful violation” of the automatic stay
21 does not require specific intent to violate the stay. *In re Goodman*, 991 F. 2d 613, 618 (9th Cir.
22 1993). Rather, the standard is whether the defendant knew of the automatic stay and whether the
23 defendant’s actions were intentional. *Id.* Damages can be awarded even if the creditor has a good
24 faith belief that it has the right to possess the property. *Colortran*, 210 B.R. 823. Here, Check
25 Into Cash was put on notice of the stay when they received notice of the Debtor’s bankruptcy on
26 January 22, 2009.
27

1 Section 362(b)(11) does not stay “the presentment of a negotiable instrument and the
2 giving of notice of and protesting dishonor of such an instrument.” 11 U.S.C. § 362(b)(11). But
3 before the creditor qualifies for this exception, [he/she] must establish that (1) there is a
4 “negotiable instrument” and (2) there was “presentment” of the instrument. *Hines v. Gordon (In*
5 *re Hines)*, 198 B.R. 769 (B.A.P. 9th Cir. 1996).

6 Pursuant to the Washington Uniform Commercial Code, a “negotiable instrument” is

7
8 [A]n unconditional promise or order to pay a fixed amount of money, with or without
9 interest or other charges described in the promise or order, if it is all of the following: (1)
10 Is payable to bearer or to order at the time it is issued or first comes into possession of a
11 holder. (2) Is payable on demand or at a definite time. (3) Does not state any other
12 undertaking or instruction by the person promising or ordering payment to do any act in
13 addition to the payment of money.
14

15 RCW § 62A.30104(a).

16
17 In this case, it is undisputed that Debtor’s post-dated check constituted a negotiable
18 instrument. “Presentment,” as defined in the Washington Commercial Code, is “a demand made
19 by or on behalf of a person entitled to enforce an instrument. . . .” RCW § 62A.3-501(a).
20 Pursuant to RCW § 62A.3-305, one is not entitled to enforce an instrument where a defense to
21 the enforcement is a discharge in bankruptcy. Section 3305 reads: “(a) Except as stated in
22 subdivision (b), the right to enforce the obligation of a party to pay an instrument is subject to all
23 of the following: (1) A defense of the obligor based on . . . (D) discharge of the obligor in
24 insolvency proceedings.” RCW 62A.3-305(a)(1).

25 Here, the debt to Check Into Cash is dischargeable in the debtor’s bankruptcy case.
26 Therefore, U.S. Bank was not entitled to enforce the postdated checks. Moreover, Check Into
27

1 Cash's post-petition acts were taken with full knowledge of the bankruptcy and in an attempt to
2 coerce the debtor to pay a pre-petition dischargeable debt. These are precisely the type of acts
3 from which a debtor is protected under section 362(a)(6) of the Bankruptcy Code. *Hines*, citing
4 *Morgan Guar. Trust Co. of N.Y. v. American Sav. & Loan Ass'n*, 804 F.2d 1487, 1492 (9th Cir.
5 1986), cert. denied, 482 U.S. 929, 107 S. Ct. 3214, 96 L. Ed. 2d 701 (1987).

6 The Ninth Circuit has been particularly vigilant about protecting a debtor's rights under
7 the automatic stay, holding unequivocally in *Schwartz v. United States* that violations of the stay
8 are void, not voidable. *Schwartz v. United States. (In re Schwartz)*, 954 F.2d 569, 571-72 (9th
9 Cir. Wash. 1992). The Court of Appeals noted that the policy considerations behind § 362(a)—
10 giving the debtor a "breathing spell" from his creditors and permitting the debtor to be "relieved
11 of the financial pressures that drove him into bankruptcy"—demand that the debtor not be
12 required to take additional steps to secure the benefit of the automatic stay. *Id.* Rather, "Those
13 taking post-petition collection actions have the burden of obtaining relief from the automatic
14 stay." *Id.* The Court would not "reward those who violate the automatic stay" by making
15 violations merely voidable. *Id.*

17 Finally, in the Ninth Circuit, a motion is a proper procedural mechanism for imposing
18 sanctions under § 362(k). *In re Zumbrun*, 88 B.R. 250, 252-53 (B.A.P. 9th Cir. Cal. 1988);
19 *Williams v. Levi (In re Williams)*, 323 B.R. 691, 702 (B.A.P. 9th Cir. 2005). The Debtor must
20 comply with the due process requirements set out in Bankruptcy Rules 7004 and 9014, but is not
21 required to initiate an adversary proceeding. *In re Zumbrun*, 88 B.R. at 252.

23 **III. PRAYER FOR RELIEF**

24 WHEREFORE, the Debtor respectfully prays that this Court:

- 25 1) enter an order declaring that Check Into Cash willfully violated the automatic stay;
26 2) return the funds obtained by Check Into Cash;
27

- 1 3) award Debtor actual damages, i.e. pay all bank fees incurred;
2 4) award Debtor attorney fees/costs;
3 5) award Debtor punitive damages against Check Into Cash for its willful violation of
4 the automatic stay;
5 6) in the alternative, that the funds obtained by Check Into Cash are turned over to
6 Debtor's bankruptcy estate pursuant to 11 U.S.C. § 549; and
7 7) for such other and further relief as may be just and proper.
8
9

10 DATED this 9th day of April, 2009.
11

12 SEATTLE DEBT LAW, LLC
13

14 By: /s/ Christina Latta Henry
15 Christina Latta Henry, WSBA #31273
16 Attorney for Debtor
17
18
19
20
21
22
23
24
25
26
27